

**COMPLAINT INVESTIGATION SUMMARY**

<b>COMPLAINT NUMBER:</b>	<b>1748.01</b>
<b>COMPLAINT INVESTIGATOR:</b>	<b>Jane Taylor-Holmes</b>
<b>DATE OF COMPLAINT:</b>	<b>May 10, 2001</b>
<b>DATE OF REPORT:</b>	<b>June 8, 2001</b>
<b>REQUEST FOR RECONSIDERATION:</b>	<b>no</b>
<b>DATE OF CLOSURE:</b>	<b>August 6, 2001</b>

**COMPLAINT ISSUES:**

Whether the Southwest School Corporation and the Greene-Sullivan Special Education Cooperative violated:

511 IAC 7-24-1(b) and (c) with regard to the school's alleged failure to appoint an educational surrogate parent for a student with a disability who is a ward of the state.

A second issue was originally identified as:

511 IAC 7-29-2 with regard to the school's alleged failure to comply with appropriate procedures when expelling a student with a disability.

During the course of the investigation, this issue was clarified and restated as two issues:

511 IAC 7-29-5 and 511 IAC 7-29-6 with regard to the school's alleged failure to convene a case conference committee in order to plan a functional behavioral assessment or review and revise a behavioral intervention plan and conduct a manifestation determination for a student with a disability who is subject to expulsion.

511 IAC 7-29-6(j) and IC 20-8.1-5.1-21 with regard to the school's expulsion of a student without written notice of the charge, an expulsion meeting, and a review of the expulsion, based on a waiver of rights signed only by the student.

**FINDINGS OF FACT:**

1. The student (the "Student") is fifteen years old and is a student at the local high school (the "School"). The Student is eligible for special education and related services as a student with a learning disability ("LD"). The Student became a ward of the state on April 16, 2001.
2. On April 18, 2001, the Student was expelled from School for the remainder of the instructional year.
3. The principal (the "Principal") of the School had the Student sign a *Waiver of Statutory Rights Applicable to an Expulsion* (the "*Waiver*") on April 18, 2001. The *Waiver* states that the signatories voluntarily waive the right to a written notice of the charge, an expulsion meeting, and a review of the expulsion and agree that the expulsion will be effective April 18 to May 25, 2001." The Student's signature is the only signature on the *Waiver*. There is a parent signature line, but there

is no parent signature on the form as required. The School expelled the Student without providing written notice of the charge, an expulsion meeting, or the opportunity for a review of the expulsion.

4. The local director of special education (the "Director") reported that the Principal contacted him for advice prior to the April 18, 2001 meeting when the Student was expelled. The Director stated that the Principal was informed that the *Waiver* could not be used. The Principal was then instructed to read specific pages from the special education cooperative's (the "Cooperative") Notice of Procedural Safeguards handbook. The Principal was also instructed to determine an alternative placement for the Student that would be agreeable with the parent and the School. The Director added that he was of the understanding that the Student's natural father still had custody of the Student.
5. The Director appointed an educational surrogate parent (the "Surrogate Parent") for the Student, and the Surrogate Parent signed the *Appointment of Educational Surrogate Parent* form (the "Surrogate Parent Form") on April 26, 2001. The Student had no special education needs for which an educational surrogate parent was required prior to the appointment of the Surrogate Parent.
6. On April 30, 2001, the case conference committee (the "CCC") convened, and the Surrogate Parent attended. The first page of the *CCC Summary/IEP* indicates that the purpose of the April 30, 2001, CCC was an *IEP* review. The box beside *Manifestation Determination* is not checked, although the *Notification of Case Conference/Annual Case Review Meeting* indicates that the meeting was to discuss the Student's *IEP* and educational progress, and to discuss the Student's alleged infraction.
7. A functional behavioral assessment (the "FBA") was conducted, and the CCC developed a behavior intervention plan (the "BIP"). The CCC revised the Student's *IEP* and placed the Student on homebound instruction. The CCC agreed to provide extended school year services to the Student until June 22, 2001, so that the Student could earn an additional two credits. The CCC also agreed to reevaluate the Student over the summer and meet prior to the beginning of the 2001-02 school year to consider the results of the evaluation. There is nothing in the *CCC Summary/IEP* to indicate that the CCC conducted a manifestation determination regarding the student's behavior that resulted in expulsion.
8. The Director submitted a copy of the Cooperative's Notice of Procedural Safeguards and reported that he met with the superintendent and the principals from the local school corporation. The Director reported that the meeting consisted of a detailed explanation of the Notice of Procedural Safeguards, with specific emphasis placed on suspension, expulsion, and surrogate parents.
9. On February 28, 2001, and March 1, 2001, the Director conducted four half-day inservice training sessions (the same inservice was presented four different times) to all certified special education personnel and building administrators. The inservice material packet and overhead documents submitted by the Director includes information regarding the procedures for expulsion, manifestation determination, FBAs, BIPs, *IEPs*, and miscellaneous corresponding forms to utilize.

#### **CONCLUSIONS:**

1. Findings of Fact #1, #5, and #6 indicate that the Student became a ward of the state on April 16, 2001, and that an educational surrogate parent was appointed on April 26, 2001. There were no intervening events during these dates for which an educational surrogate parent was required. Therefore, no violation of 511 IAC 7-24-1(b) and (c) is found.
2. As part of the procedural safeguards afforded a student with a disability who is subject to

expulsion, 511 IAC 7-29-6 requires that the CCC convene to conduct a manifestation determination. If the CCC determines that the student's misconduct is a manifestation of the student's disability, the student may not be expelled. In addition, 511 IAC 7-29-5 requires the CCC to plan an FBA or review a BIP (if one exists). Finding of Fact #7 reflects that, although the CCC convened within the requisite time period, conducted an FBA, and revised the BIP, the CCC did not conduct a manifestation determination. No violation of 511 IAC 7-29-5 is found, but a violation of 511 IAC 7-29-6 occurred. Although Findings of Fact #8 and #9 indicate that the special education planning district has provided inservice on suspension, expulsion, and manifestation determination procedures, additional corrective action is warranted in light of the School's non-compliance.

3. 511 IAC 7-29-6(j) requires the School's expulsion procedures comply with Indiana statute. IC 20-8.1-5.1-21 requires the signatures of the parent and student in order to effect a valid and voluntary waiver of rights with regard to the expulsion of a student. Findings of Fact #1, #2, and #3 indicate that the School obtained the signature of the fifteen-year-old Student, but did not obtain a signature from the Student's parent. Finding of Fact #4 reflects that the Director advised the School Principal that the *Waiver* form was not to be used. However, the School nonetheless suspended the Student without affording the Student the rights provided in IC 20-8.1-5.1 for a student who is subject to expulsion. Therefore, violations of 511 IAC 7-29-6(j) and IC 20-8.1-5.1-21 are found.

**The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

The Southwest School Corporation and the Greene-Sullivan Special Education Cooperative shall:

1. Reconvene the case conference committee to conduct a manifestation determination in accordance with 511 IAC 7-29-6(d).
  - a. If the case conference committee determines the student's misconduct is a manifestation of the student's disability, the committee shall also determine the compensatory services to be provided to the student during the summer for the interruption of services experienced between April 18 and May 25, 2001. A copy of the *CCC Report* documenting the details of the case conference committee's consideration and revised *IEP* shall be submitted to the Division no later than June 29, 2001. The Student's educational record shall also be amended to expunge the expulsion. An assurance statement that this has been completed shall be submitted to the Division no later than June 29, 2001.
  - b. If the case conference committee determines the student's misconduct is not a manifestation of the Student's disability, the case conference committee shall detail its consideration in the *CCC Report* and forward the *Report* to the local superintendent. The superintendent shall decide whether an expulsion examiner shall be appointed.
    - i. If an expulsion examiner is appointed, the examiner shall give notice to the Student's parent of the right to request and appear at an expulsion meeting in accordance with IC 20-8.1-5.1-13. All expulsion proceedings shall comply with the requirements of IC 20-8.1-5.1. A copy of the *CCC Report* and all documents relating to the appointment of the expulsion examiner and the expulsion process shall be submitted to the Division no later than June 29, 2001.
    - ii. If the Superintendent determines that an expulsion examiner shall not be appointed, the case conference committee shall convene to determine the compensatory services to be provided to the student during the summer for the interruption of services experienced between April 18 and May 25, 2001. A copy of the *CCC Report* documenting the details of the case conference committee's consideration and revised *IEP* shall be submitted to the Division no later than June 29, 2001. The Student's educational record shall also be amended to expunge the

expulsion. An assurance statement that this has been completed shall be submitted to the Division no later than June 29, 2001.

2. Review and, if necessary, revise current policies and procedures to ensure that, when a special education student is subject to expulsion proceedings:
  - a. the CCC convenes to conduct a manifestation determination in accordance with 511 IAC 7-29-6(a) through (h);
  - b. appropriate procedures, based on the CCC's manifestation determination, are followed; and
  - c. the waiver of rights, as described in IC 20-8.1-5.1-21, is not used with special education students unless the CCC has determined the misconduct was not a manifestation of the student's disability and the superintendent determines that an expulsion examiner is to be appointed.

A copy of these policies and procedures shall be submitted to the Division no later than August 31, 2001. A written reminder of these policies shall be sent to building administrators, and a copy of the written reminder shall be submitted to the Division no later than August 31, 2001.

DATE REPORT COMPLETED: June 7, 2001